



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Emcore Corporation
145 Belmont Drive
Somerset, New Jersey 08873

Attn: Reuban F. Richards, Jr.
President and Chief Executive Officer

Dear Mr. Richards:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Emcore, Inc. ("Emcore") of Somerset, New Jersey, has committed 71 violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Emcore committed the following violations:

**Charges 1-12 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting
Items Without the Required Department of Commerce Licenses**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 12 occasions between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported metal organic chemical vapor disposition tools, items subject to the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1998 to 2003. The Regulations governing the violations at issue are found in the 1998 to 2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-2003)). The Regulations define the violations that BIS alleges occurred and establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), continues the Regulations in effect under IEEPA.



Regulations (ECCN 3B001a.2),³ to Taiwan without obtaining the licenses required by Section 742.4 of the Regulations. In doing so, Emcore committed 12 violations of Section 764.2(a) of the Regulations.

**Charges 13-25 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct – Servicing
Unlicensed Tools Without the Required Department of Commerce
Licenses**

Between on or about July 21, 1998 and on or about May 19, 2003, on hundreds of separate occasions, Emcore serviced, and provided parts for, the 13 tools exported to Taiwan without Department of Commerce licenses referenced in Charges 1-12 above. Emcore is charged with 13 violations of Section 764.2(a) of the Regulations.

**Charges 26-37 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File
Shipper's Export Declarations**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 12 occasions between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported the items referenced in Charges 1-12 above to Taiwan without filing a Shipper's Export Declaration⁴ as required by Section 758 of the Regulations. In so doing, Emcore committed 12 violations of Section 764.2(a) of the Regulations.

**Charges 38-39 15 C.F.R. § 764.2(i) - Failure to Comply With Reporting,
Recordkeeping Requirements - Failure to Retain Export Control
Documents**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on or about July 21, 1998 and on or about June 24, 1999, Emcore failed to retain export control documents (including Shipper's Export Declarations and air waybills) in connection with the exports of the same date as required by Section 762.2 of the Regulations. In so doing, Emcore committed two violations of Section 764.2(i) of the Regulations.

³ The term "ECCN" refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

⁴ Shipper's Export Declarations are export control documents, as defined in Part 772 of the Regulations.

Charges 40-53 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Violations of License Conditions

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 14 occasions between on or about February 24, 2000 and on or about January 2, 2003, Emcore failed to submit export control documents to the Department of Commerce (including Shipper's Export Declarations and air waybills) as required by conditions on the export licenses Emcore obtained for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan. In so doing, Emcore committed 14 violations of Section 764.2(a) of the Regulations.

Charges 54-66 15 C.F.R. § 764.2(g) - False or Misleading Representations of Fact - False Statements on Shipper's Export Declarations Concerning Authority to Export

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on 13 occasions between on or about March 28, 2001 and on or about November 2, 2002, Emcore filed or caused to be filed Shipper's Export Declarations for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan that stated the tools qualified for export from the United States as NLR ("No License Required"). These representations were false because, as described above, a license was required to export these items. In doing so, Emcore committed 13 violations of Section 764.2(g) of the Regulations.

Charges 67-69 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File Shipper's Export Declarations

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on three occasions between on or about February 24, 2000 and on or about January 2, 2003, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan and failed to file a Shipper's Export Declaration as required by Section 758 of the Regulations. In so doing, Emcore committed three violations of Section 764.2(a) of the Regulations.

Charges 70-71 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on Shipper's Export Declarations

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on or about March 27, 2001, and on or about April 6, 2001, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to Taiwan and filed or caused to be filed Shipper's Export Declarations that failed to show the ECCN as required by Section 758 of the

Regulations. In failing to show information required by Section 758 of the Regulations, Emcore committed two violations of Section 764.2(a) of the Regulations.

Accordingly, Emcore is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation, except that, for violations involving national security controls occurring between November 13, 2000, and August 20, 2001, the maximum civil penalty allowed by law is \$120,000 for items controlled for National Security ("NS") reasons;⁵

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Emcore fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Emcore defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Emcore. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

Emcore is further notified that it is entitled to an agency hearing on the record if Emcore files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Emcore is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should you have a proposal to settle this case, your or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Emcore's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street, Baltimore, Maryland 21202-4022

⁵ *See* 15 C.F.R. § 6.4(a)(2).

In addition, a copy of Emcore's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: David C. Recker, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

David C. Recker is the attorney representing BIS in this case. Any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Attachment: Schedule A

SCHEDULE A
EMCORE CORPORATION

Charges	Date of Export (on or about)	Item	ECCN	Value (U.S. dollars)	Destination	Air Waybill No.	Invoice No.
1, 13, 26, 38	07/21/98	Discovery 180	3B001A.2	849,000	Taiwan	Stipulated	Stipulated
2, 14, 27	07/21/98	Discovery 180	3B001A.2	849,000	Taiwan	Stipulated	4380
3, 15, 28	11/25/98	Discovery 180	3B001A.2	1,165,000.00	Taiwan	695-09595121	Stipulated
4, 16, 29	04/08/99	Enterprise E400	3B001A.2	1,490,000.00	Taiwan	297-75353272	5193
5, 17, 30	04/16/99	Discovery 180	3B001A.2	2,000,000.00	Taiwan	Stipulated	5256
6, 18, 19, 31	05/04/99	Enterprise E400 & Discovery 180	3B001A.2	2,650,000.00	Taiwan	297-75353530	5292, 5293
7, 20, 32	05/24/99	Enterprise E400	3B001A.2	1,500,000.00	Taiwan	Stipulated	5451
8, 21, 33	05/24/99	Discovery 180	3B001A.2	1,150,000.00	Taiwan	Stipulated	5452
9, 22, 34	06/01/99	Discovery 180	3B001A.2	1,000,000.00	Taiwan	Stipulated	5487
10, 23, 35	06/24/99	Enterprise E400	3B001A.2	1,500,000.00	Taiwan	297-76162376	5576
11, 24, 36, 39	06/24/99	Discovery 180	3B001A.2	975,000.00	Taiwan	Stipulated	Stipulated
12, 25, 37	07/08/99	Discovery 75	3B001A.2	546,000.00	Taiwan	297-76162391	5647

Charges	Date of Export (on or about)	Item	ECCN	Value (U.S. dollars)	Destination	Air Waybill No.	Invoice No.
40, 67	02/24/00	(2) Discovery 180	3B001	1,260,000.00	Taiwan	297-70231210	Stipulated
68	03/03/00	Discovery 180	3B001	630,000.00	Taiwan	297-78509395	Stipulated
41	06/28/00	Discovery 180	3B001	1,079,191.00	China	999-97082366	Stipulated
42	06/28/00	Enterprise 400	3B001	1,860,372.00	China	999-97082366	Stipulated
43	09/01/00	Enterprise 400	3B001	2,000,000.00	China	Stipulated	Stipulated
44	12/06/00	Enterprise Gold	3B001	1,644,500.00	China	297-23917854	Stipulated
45	01/27/01	(2) Discovery 180	3B001	2,360,000.00	Taiwan	297-87832242	Stipulated
46, 54, 70	03/28/01	Discovery 180	3B001	1,044,850.00	Taiwan	297-88610524	Stipulated
55	03/30/01	Discovery 180	3B001	1,044,850.00	Taiwan	297-88610513	Stipulated
47, 56, 71	04/11/01	Discovery 180	3B001	1,200,000.00	Taiwan	297-88610561	Stipulated
57	06/09/01	Discovery 180	3B001	1,044,850.00	Taiwan	297-88610756	Stipulated

Charges	Date of Export (on or about)	Item	ECCN	Value (U.S. dollars)	Destination	Air Waybill No.	Invoice No.
58	06/11/01	Discovery 180	3B001	1,444,700.00	Taiwan	297-88610760	Stipulated
59	06/30/01	Discovery 180	3B001	1,150,000.00	Taiwan	297-88610804	Stipulated
60	07/07/01	Discovery 180	3B001	1,200,000.00	Taiwan	297-88610815	Stipulated
61	08/03/01	Discovery 180	3B001	1,150,000.00	Taiwan	297-88610900	Stipulated
48, 62	08/29/01	(2) Discovery 180	3B001	2,936,000.00	Taiwan	297-88610981	Stipulated
63	09/10/01	(2) Discovery 180	3B001	2,782,000.00	Taiwan	297-88611003	Stipulated
49	09/17/01	Discovery 180	3B001	798,000.00	Taiwan	297-89281371	Stipulated
50, 64	02/01/02	Discovery 180	3B001	1,360,000.00	China	999-72992673	Stipulated
51, 65	02/01/02	Enterprise E400	3B001	1,830,000.00	China	999-72992673	Stipulated
52, 66	11/02/02	Enterprise 300	3B001	1,430,000.00	Taiwan	297-80650441	Stipulated
53, 69	01/02/03	Discovery 125	3B001	850,000.00	China	999-75153455	Stipulated

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Emcore Corporation)
145 Belmont Drive)
Somerset, New Jersey 08873,)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Emcore Corporation (“Emcore”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),²

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations BIS has alleged occurred from 1998 to 2003. The Regulations governing the alleged violations at issue are found in the 1998-2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-2003)). The Regulations define the violations that BIS alleges occurred and establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of

WHEREAS, BIS has notified Respondent of its intention to initiate an administrative proceeding against Respondent, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Respondent that alleged that Respondent committed 71 violations of the Regulations, specifically:

1. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Items Without the Required Department of Commerce Licenses:*
Between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported metal organic chemical vapor disposition tools, items subject to the Regulations (ECCN 3B001a.2),³ to Taiwan without obtaining the licenses required by Section 742.4 of the Regulations.
2. *13 Violations of 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct – Servicing Unlicensed Tools Without the Required Department of Commerce Licenses:* Between on or about July 21, 1998 and on or about May 19, 2003, on hundreds of separate occasions, Emcore serviced, and provided parts for, the 13 tools exported to Taiwan without Department of Commerce licenses referenced in paragraph one above.

August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.

³ The term “ECCN” refers to an Export Control Classification Number. See Supp. 1 to 15 C.F.R. § 774.

3. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File Shipper's Export Declarations:* Between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported the items referenced in paragraph one above to Taiwan without filing a Shipper's Export Declaration as required by Section 758 of the Regulations.
4. *Two Violations of 15 C.F.R. § 764.2(i) - Failure to Comply With Reporting, Recordkeeping Requirements - Failure to Retain Export Control Documents:* On or about July 21, 1998, and on or about June 24, 1999, Emcore failed to retain export control documents (including Shipper's Export Declarations and air waybills) in connection with the exports of the same date as required by Section 762.2 of the Regulations.
5. *14 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Violations of License Conditions:* Between on or about February 24, 2000 and on or about January 2, 2003, Emcore failed to submit export control documents to the Department of Commerce (including Shipper's Export Declarations and air waybills) as required by conditions on the export licenses Emcore obtained for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan.

6. *13 Violations of 15 C.F.R. § 764.2(g) - False or Misleading Representations of Fact - False Statements on Shipper's Export Declarations Concerning Authority to Export:* Between on or about March 28, 2001 and on or about November 2, 2002, Emcore filed or caused to be filed Shipper's Export Declarations for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan that stated the tools qualified for export from the United States as NLR ("No License Required"). These representations were false because, as described above, a license was required to export these items.
7. *Three Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File Shipper's Export Declarations:* Between on or about February 24, 2000 and on or about January 2, 2003, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan and failed to file a Shipper's Export Declaration as required by Section 758 of the Regulations.
8. *Two Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on Shipper's Export Declarations:* On or about March 27, 2001 and on or about April 6, 2001, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to Taiwan and filed or caused to be filed Shipper's Export Declarations that failed to show the ECCN as required by Section 758 of the Regulations.

WHEREAS, Emcore has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Emcore fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, Emcore enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Emcore states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Emcore neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Emcore wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Emcore agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Emcore, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Emcore in complete settlement of the violations of the Regulations set forth in the proposed charging letter:
 - a. Emcore shall be assessed a civil penalty in the amount of \$400,000, \$200,000 of which shall be paid to the U.S. Department of Commerce within thirty days from

the date of entry of the appropriate Order. The remaining \$200,000 shall become due and payable one year from the date of entry of the appropriate Order.

- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Emcore. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of Emcore's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Emcore hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$400,000 civil penalty, BIS will not initiate any further administrative proceeding against Emcore in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

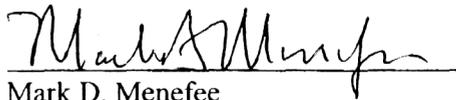
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Mark D. Menefee
Director
Office of Export Enforcement

Date: 12/12/03

EMCORE CORPORATION



Howard W. Brodie
Vice President and General Counsel

Date: 12/18/03

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Emcore Corporation)
145 Belmont Drive)
Somerset, New Jersey 08873,)
)
Respondent.)
)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having initiated an administrative proceeding against Emcore Corporation (“Emcore”) pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),² based on the proposed charging letter issued to Emcore that alleged that Emcore committed 71 violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations BIS has alleged occurred from 1998 to 2003. The Regulations governing the alleged violations at issue are found in the 1998-2003 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-2003)). The Regulations define the violations that BIS alleges occurred and establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003), has continued the Regulations in effect under IEEPA.

1. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exporting Items Without the Required Department of Commerce Licenses:* Between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported metal organic chemical vapor disposition tools, items subject to the Regulations (ECCN 3B001a.2),³ to Taiwan without obtaining the licenses required by Section 742.4 of the Regulations.
2. *13 Violations of 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct – Servicing Unlicensed Tools Without the Required Department of Commerce Licenses:* Between on or about July 21, 1998 and on or about May 19, 2003, on hundreds of separate occasions, Emcore serviced, and provided parts for, the 13 tools exported to Taiwan without Department of Commerce licenses referenced in paragraph one above.
3. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File Shipper’s Export Declarations:* Between on or about July 21, 1998 and on or about July 8, 1999, Emcore exported the items referenced in paragraph one above to Taiwan without filing a Shipper’s Export Declaration as required by Section 758 of the Regulations.
4. *Two Violations of 15 C.F.R. § 764.2(i) - Failure to Comply With Reporting, Recordkeeping Requirements - Failure to Retain Export Control Documents:* On or about July 21, 1998, and on or about June 24, 1999, Emcore failed to retain export control documents (including Shipper’s Export Declarations and air

³ The term “ECCN” refers to an Export Control Classification Number. *See* Supp. 1 to 15 C.F.R. § 774.

waybills) in connection with the exports of the same date as required by Section 762.2 of the Regulations.

5. *14 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Violations of License Conditions:* Between on or about February 24, 2000 and on or about January 2, 2003, Emcore failed to submit export control documents to the Department of Commerce (including Shipper's Export Declarations and air waybills) as required by conditions on the export licenses Emcore obtained for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan.
6. *13 Violations of 15 C.F.R. § 764.2(g) - False or Misleading Representations of Fact - False Statements on Shipper's Export Declarations Concerning Authority to Export:* Between on or about March 28, 2001 and on or about November 2, 2002, Emcore filed or caused to be filed Shipper's Export Declarations for exports of metal organic chemical vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan that stated the tools qualified for export from the United States as NLR ("No License Required"). These representations were false because, as described above, a license was required to export these items.
7. *Three Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to File Shipper's Export Declarations:* Between on or about February 24, 2000 and on or about January 2, 2003, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to the People's Republic of China and Taiwan

and failed to file a Shipper's Export Declaration as required by Section 758 of the Regulations.

8. *Two Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Failing to Provide Required Information on Shipper's Export Declarations:* On or about March 27, 2001 and on or about April 6, 2001, Emcore exported metal organic vapor disposition tools (ECCN 3B001a.2) to Taiwan and filed or caused to be filed Shipper's Export Declarations that failed to show the ECCN as required by Section 758 of the Regulations.

BIS and Emcore having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

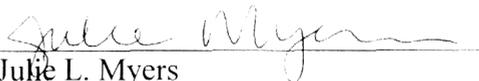
FIRST, that a civil penalty of \$400,000 is assessed against Emcore, \$200,000 of which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. The remaining \$200,000 shall become due and payable one year from the date of entry of the appropriate Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Emcore will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Emcore. Accordingly, if Emcore should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Emcore's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


Julie L. Myers
Assistant Secretary of Commerce
for Export Enforcement

Entered this 15th day of January 2004.